PGC Golf Management Sdn Bhd v Sarawak Stadium Corp

HIGH COURT (KUCHING) — SUIT NO 22–33 OF 1998-III (I)
DAVID WONG JC
29 JUNE 2006

Civil Procedure — Pleadings — Parties bound by — Claim of breach of contract and implied term — Claim disallowed

Contract — Breach — Damages — Tenancy agreement — Termination as a result of rental arrears by plaintiff — Defendant took possession of land prior to the expiration of the three months period provided for under the tenancy agreement — Plaintiff alleged that it was prevented from removing its trade fixtures on land — Whether plaintiff had not suffered any damages as a result of the defendant taking possession of the land

Contract — Breach — Implied term — Construction of tenancy agreement — Implied term that that the plaintiff was entitled to remove the fixtures when the tenancy agreement was terminated — Whether such term should be implied

The proceedings arise out of a claim by the plaintiff for damages arising from an alleged breach (cll 5 and 9) of a tenancy agreement ('the tenancy agreement') in respect of a piece of land ('the land') by the defendant. The alleged breach related to the defendant repossessing the land prior to the expiration of the three months period provided for under cl 5 of the tenancy agreement. The defendant denied such breach and further made a counterclaim of RM23,081.06 being outstanding rentals and water consumed by the plaintiff. The plaintiff's case was that despite the fact that the tenancy agreement was terminated pursuant cl 5, it still had the right to remove the trade fixtures. The plaintiff conceded that there was no specific provision in the tenancy agreement to allow the plaintiff to remove the trade fixtures if the tenancy agreement is terminated pursuant to cl 5. However, the court was urged to look at the surrounding circumstances in which the tenancy agreement was entered into to ascertain the true intentions of the parties. By surrounding circumstances, the plaintiff referred to the length of the tenancy, the capital investment injected by the plaintiff and the negotiations conducted by the plaintiff and the defendant. Further the plaintiff urged the court to utilize the principle of equity to imply that there was a tenancy coupled with an interest. It was submitted that to interpret cl 5 of the tenancy agreement to mean that the plaintiff had no right to remove the fixtures would be manifestly unfair in the circumstances. The court was asked to imply a term in the tenancy agreement to allow the plaintiff to remove the trade fixtures.

Held, dismissing the plaintiff's claim and allowing the defendant's counter claim:

(1) In so far as the alleged breach of cl 9 of the tenancy agreement it was inconsequential as there was no dispute that the plaintiff had received the letter informing the plaintiff that it was in arrears of 4 months rental and gave the plaintiff a 3 months written notice to deliver vacant possession of the land to the defendant pursuant to cl 5 of the tenancy agreement as this fact was part of the parties' agreed facts. As for the breach of cl 5, it was again of no relevance as it was the plaintiff itself who ceased operations and vacated the land. The allegation that the plaintiff was prevented from removing the fixtures was irrelevant as its right to remove the trade fixtures depended on the interpretation of the tenancy agreement. The plaintiff had not suffered any damages as a result of the defendant taking possession of the land (see para 13).

(2) The plaintiff's contention completely departed from its pleadings which were grounded on its claim on the breach of cl 5 and 9 the tenancy agreement by the defendant. It is trite law that parties are bound by their pleadings and courts will not decide on matters which had not been pleaded. What has not been pleaded here was that there was an implied term in the tenancy agreement that the plaintiff was entitled to remove the fixtures when the tenancy agreement was terminated under cl 5. The plaintiff's attempt to say that the tenancy agreement was a lease coupled with an interest was improper (see para 14).

(3) The court will only imply a term when the parties must have intended to include though it has not been expressly set out in the agreement. In interpreting any contract, the court must look at the words used within the four corners of the agreement to ascertain the intention of the parties and must interpret the clause in the context of the whole agreement. In this case, the parties had thought about the inequity of a situation if the tenancy agreement were terminated prior to the expiration of the seven years period in view of the heavy investment by the plaintiff. Furthermore, this tenancy agreement was drawn up by a firm of solicitors, whom would have been given all the relevant instructions by both the plaintiff and the defendant. There were no evidences to the contrary. Once the tenancy agreement was drafted and executed by the parties, the court was only entitled to look at the words employed in it (see paras 15, 17, 23).

[Bahasa Malaysia summary

Prosiding ini berbangkit dari tuntutan plaintif untuk gantirugi yang didakwa berpunca dari pengingkaran (klausa 5 dan 9) perjanjian penyewaan ('Perjanjian tersebut') berhubung dengan sebidang tanah ('Tanah tersebut') oleh defendan. Pengingkaran yang dikatakan itu berhubung dengan tindakan defendan mengambil semula Tanah tersebut sebelum tamat tempoh tiga bulan sebagaimana yang diperuntukan dibawah kl 5 perjanjian tersebut. Defendan menafikan pengingkaran tersebut dan selanjutnya membuat satu tuntutan balas sebanyak RM23,081.06 iaitu merupakan sewaan tertunggak dan air yang digunakan oleh plaintif. Kes plaintif adalah bahawa walaupun perjanjian tersebut telah ditamatkan dibawah kl 5, ia masih mempunyai hak untuk mengalih lekapan-lekapan perniagaan. Plaintif bersetuju

bahawa tidak tedapat peruntukan yang spesifik di dalam perjanjian tersebut yang membenarkan plaintif mengalihkan lekapan-lekapan perniagaan jika perjanjian tersebut ditamatkan dibawah kl 5. Walaubagaimanapun, Mahkamah diujarkan agar melihat kepada keadaan sekeliling dimana perjanjian tersebut dimasuki untuk menentukan niat sebenar pihak-pihak. Keadaan sekeliling yang maksudkan oleh plaintif ialah tempoh sewaan, modal pelaburan yang dikeluarkan oleh plaintif dan perbincangan-perbincangan yang dilakukan oleh plaintif dan defendan. Selanjutnya, plaintif menyarankan agar mahkamah menggunapakai prinsip ekuiti untuk memberi implikasi terdapatnya sewaan yang diiringi oleh satu kepentingan. Ianya dihujjahkan bahawa untuk mentafsirkan kl 5 perjanjian tersebut memberi makna yang plaintif tidak mempunyai hak untuk mengalihkan lekapan-lekapan tersebut adalah satu ketidakadilan yang manifest didalam keadaan ini. Mahkamah diminta untuk memberi terma tersirat di dalam perjanjian tersebut bagi membenarkan plaintif mengalih lekapan-lekapan perniagaan.

Diputuskan, menolak tuntutan plaintif dan membenarkan tuntutan balas defendan:

(1) Berhubung dengan dakwaan pengingkaran kl 9 perjanjian tersebut, ianya tidak penting kerana tidak dipertikaikan yang plaintif telah menerima sepucuk surat yang memberitahunya yang ia telah empat bulan tertunggak membayar sewa dan tiga bulan notis bertulis diberikan kepada plantif untuk memberikan milikan kosong Tanah tersebut kepada defendan menurut kl 5 perjanjian tersebut kerana fakta ini adalah sebahagian dari fakta-fakta yang dipersetujui oleh pihak-pihak. Berhubung dengan pengingkaran kl 5, ianya juga tidak relevan kerana plaintif sendirinya telah menamatkan operasinya dan keluar dari Tanah tersebut. Dakwaan yang plaintif dihalang dari memindahkan lekapan-lekapan adalah tidak relevan kerana haknya untuk mengalihkan lekapan-lekapan perniagaan bergantung kepada tafsiran perjanjian tersebut. Plaintif tidak menanggung sebarang kerugian akibat dari perbuatan defendan mengambil milikan tanah tersebut (lihat perenggan 13).

(2) Dakwaan plaintif telah lari jauh dari plidingnya yang mana ianya diasaskan pada tuntutannya berdasarkan pengingkaran kl 5 dan 9 perjanjian tersebut oleh defendan. Ianya satu undang-undang yang sediamaklum bahawa pihak-pihak adalah terikat dengan pliding mereka dan mahkamah tidak akan memutuskan perkara-perkara yang tidak diplid. Apa yang tidak diplid di sini adalah terdapat satu terma tersirat di dalam perjanjian tersebut yang berhak untuk mengalih lekapan-lekapan apabila perjanjian tersebut ditamatkan dibawah kl 5. Percubaan plaintif mengatakan yang perjanjian tersebut adalah satu pajakan yang diiringi satu kepentingan adalah tidak betul (lihat perenggan 14).

(3) Mahkamah hanya akan mengiktiraf terma tersirat apabila pihak-pihak sememangnya berniat untuk memasukkan terma tersebut walaupun ianya tidak secara nyata dinyatakan didalam perjanjian. Dalam mentafsir sesuatu kontrak, mahkamah hendaklah melihat kepada perkataan-perkataan yang digunakan di dalam perjanjian tersebut untuk memastikan niat-niat pihak-pihak dan hendaklah mentafsirkan sesuatu klausa itu dalam konteks keseluruhan perjanjian tersebut. Di dalam kes ini, pihak-pihak telah berfikir

mengenai satu situasi yang tidak adil jika perjanjian tersebut ditamatkan sebelum habis tempoh tujuh tahun memandangkan pelaburan besar yang dibuat oleh plaintif. Selanjutnya, perjanjian tersebut telah didraf oleh satu firma guaman dimana semua arahan-arahan yang relevan telah diberikan oleh kedua-dua pihak plaintif dan defendan. Tiada terdapat keterangan sebaliknya. Apabila perjanjian tersebut telah didraf dan dimeterai olah pihak-pihak, mahkamah hanya berhak untuk melihat pada perkataan-perkataan yang digunakan didalamnya (lihat perenggan 15, 17, 23).]

Notes

For cases on damages for breach of contract, see 3(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 2275–2297.

For cases on implied term, see 3(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 2316–2317.

For cases on parties bound by pleadings, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 4891–4892.

Cases referred to

Abdul Johari Abdul Rahman v Lim How Chong & Ors [1999] 5 MLJ 593 (refd)
Commercial Bank of Australia v Amadio [1983] 151 CLR 447 (refd)
Central Bank of India v Hartford Fire Insurance Co Ltd AIR [1965] SC 1288 (refd)
Royal Selangor Golf Club, The v Anglo-Oriental (Malaya) Sdn Bhd [1990] 2 MLJ 163 (refd)
Mulpha Pacific Sdn Bhd v Paramount Corp Sdn Bhd [2003] 4 MLJ 357 (refd)

Legislation referred to

Civil Law Act 1956 s 11

Mohamad Ivan Hussein (Ivan Hussein Advocates) for the plaintiff.
Tan Thiam Teck (Reddi & Co Advocates) for the defendant.

David Wong JC:

THE PROCEEDINGS

[1] The proceedings arise out of a claim by the plaintiff, PGC Golf Management Sdn Bhd for damages arising from an alleged breach of a tenancy agreement dated 5 July 1994 ('tenancy agreement') in respect of land at Siol Batu, Kuching, Sarawak containing an area of 11.347 hectares, more or less and described as Lots 1598 and 2693, Block 18, Salak land District (Land) by the defendant. The alleged breach relates to the defendant repossessing the land prior to the expiration of the three month period provided for under cl 5 of the tenancy agreement. The defendant denies such breach and further made a counterclaim of RM23,081.06 being outstanding rentals for part of the month of October 1996, the months of

November, December 1996 and June, July August, September and October 1997 and water consumed by the plaintiff which had been paid by the defendant. A

UNDISPUTED FACTS

[2] The defendant has the beneficial interest to the land which contains a driving range operated by Awang Kamarudin Awang Mohammad trading under the style and firm name of Petra Golf Centre. B

[3] By a letter dated 29 July 1993 (exh A pp 2–3, also exhibited as RZ1 in PW1-A), Petra Golf Centre wrote to the defendant to inform that it planned to construct nine greens and tee boxes on the land and requested from the defendant a minimum of ten years tenancy in light of the expenditure to be incurred in constructing the nine greens and tee boxes. C

[4] The defendant by a letter dated 12 January 1994 (exh A pp 5–6, also exhibited as RZ2 in PW 1-A) informed the plaintiff that it was agreeable to its proposal to build a nine hole golf course. By a letter dated 14 January 1994 (exh A p 7), the plaintiff replied that it accepted the terms and conditions as stated in RZ-2. D

[5] The result of the aforesaid letters is the tenancy agreement entered into between the defendant and the plaintiff on the 5 July 1994 (exh A, pp 8–15). E

[6] On or about September 1997, the plaintiff had defaulted in its payment of rental for a number of months. As a result of the default, the defendant on 15 September 1997 issued a letter informing the plaintiff that it is in arrears of four months rental amounting to RM 19,128.40 and gave the plaintiff a three month written notice to deliver vacant possession of the said land to the defendant pursuant to cl 5 of the tenancy agreement. F

[7] By a letter dated 1 October 1997, the plaintiff informed the defendant that it would return the land after it had cleaned and emptied the buildings thereon which were erected by it. By another letter dated 15 October 1997, the plaintiff informed the defendant that it was waiting for interested parties to submit proposals for the acquisition of the plaintiff but if no proposal was acceptable to the plaintiff by the end of October 1997, the plaintiff intended to cease operations of Petra Golf Course with effect from 31 October 1997. The plaintiff ceased operations and vacated the said land on the 31 October 1997. On 1 November 1997, the defendant took possession of the land. G H

Issues

[8] In my view, the pivotal issue is the construction of cl 5 of the tenancy agreement which states as follows: I

> If the monthly rent and or any part thereof shall be and remain unpaid for Fourteen (14) days after becoming payable whether demanded or if any of the covenants of the Tenant's part herein contained shall not observed or performed, the landlord shall be at liberty to

terminate this Agreement after giving three (3) months written notice to the Tenant in which event, the Tenant shall yield up vacant possession of the said land to the landlord forthwith.

BUT WITHOUT PREJUDICE to the right of the landlord to commence legal action in respect of any antecedent breach of the Tenant's covenants herein contained.

[9] The plaintiff's case is simply that despite the fact that the tenancy agreement was terminated pursuant to cl 5, it still had the right to remove the trade fixtures as stated in cl 5 of the statement of claim which are as follows:

(a) Tee Box

(b) Greens

(c) Fairways

(d) Administration Block

(e) Rest hall

(f) Driving Range Shed

[10] Mr Mohd Ivan Bin Hussein (Hussein), learned counsel for the plaintiff concedes that there is no specific provision in the tenancy agreement to allow the plaintiff to remove the aforesaid fixtures if the tenancy agreement is terminated pursuant to cl 5. He however submits and urges the court to look at the surrounding circumstances in which the tenancy agreement was entered into to ascertain the true intentions of the parties. By surrounding circumstances, Mr Hussein refers to the length of the tenancy, the capital investment injected by the plaintiff and the negotiations conducted by the plaintiff and the defendant evidenced in RZ1 and RZ2. Further he urges the court to utilize the principle of equity to imply that there is a tenancy coupled with an interest. In short he says that to interpret cl 5 of the tenancy agreement to mean that the plaintiff had no right to remove the fixtures would be manifestly unfair in the circumstances. Put in another way he is asking me to imply a term in the tenancy agreement to allow the plaintiff to remove the fixtures.

[11] With respect, Mr Hussein has in his submission completely departed from the plaintiff's pleadings which grounded its claim on the breach of the tenancy agreement by the plaintiff of cll 5 and 9 of the same (see Clement Skinner J's ruling on 23 September 2004 in this case on plaintiff's application to amend its pleadings)

[12] However before I deal with the consequence of Mr Hussein's departure from the pleadings, I shall deal with the alleged breach of clauses 5 and 9 of the tenancy agreement. In so far as the alleged breach of cl 9, it is inconsequential as there is no dispute that the plaintiff had received the letter dated 15 September 1997 as this fact is part of the parties' agreed facts. As for the breach of cl 5, it is again of no relevance as it was the plaintiff itself who ceased operations and vacated the said land on the 31 October 1997. The allegation that the plaintiff was prevented from removing the fixtures is again irrelevant as its right to remove the fixtures depend on the interpretation of the tenancy agreement. In any event, I agree with Mr Tan Thiam

Teck, learned counsel for the defendant that the plaintiff had not suffered any damages as a result of the defendant taking possession of the land.

[13] I come back to Mr Hussein's departure from the pleadings in his submission. It is trite law that parties are bound by their pleadings and courts will not decide on matters which had not been pleaded. What has not been pleaded here is that there is an implied term in the tenancy agreement that the plaintiff is entitled to remove the fixtures when the tenancy agreement is terminated under cl 5. This is in fact the second time the plaintiff is attempting to amend its pleadings. When the trial for this case started on the 22 September 2004 in court 1, the plaintiff wanted to include the element of malicious intention on the part of the defendant. That attempt was rejected by Clement Skinner J on the grounds that the plaintiff's amendment was a complete departure from the pleaded case and not made in good faith. The learned judge's decision was affirmed by the Court of Appeal. For the same reasons, I also find the plaintiff's attempt to say that the tenancy agreement is a lease coupled with an interest to be improper.

[14] Be that as it may, I will deal with Mr Hussein's submission. The law is that the court will only imply a term when the parties must have intended to include though it has not been expressly set out in the agreement. Is this the case here? In interpreting any contract, the court must look at the words used within the four corners of the agreement to ascertain the intention of the parties and must interpret the clause in the context of the whole agreement. In this case, if one looks at the tenancy agreement as a whole, one can easily ascertain that the parties had thought about the inequity of a situation if the tenancy agreement was terminated prior to the expiration of the seven year period in view of the heavy investment by the plaintiff. That is the reason for cl 7 of the tenancy agreement which provides that

> Either party herein may opt to terminate this Agreement by giving the other party at least six (6) month's written notice to such effect PROVIDED ALWAYS that if the landlord shall exercise their right to terminate this Agreement before the expire of the term herein created, the landlord shall compensate the Tenant for the capital expenditure and outlay in respect of the said golf course for the unused period in proportion to the whole of the term herein created AND PROVIDED ALWAYS that the quantum of the compensation shall be on the basis of independent professional survey and valuation.

[15] Where however if the plaintiff/tenant fails to comply with the terms of the tenancy agreement by failing to pay the rentals, cl 5 provides that the defendant can terminate it and upon termination the plaintiff is obliged to return the land forthwith. No compensation is payable to the plaintiff simply because it is in default. As rightly pointed out by Mr Tan Thiam Teck, the plaintiff can continue to enjoy the benefit of its investment in the land as long as it pays the agreed rental.

[16] Furthermore, this tenancy agreement was drawn up by a firm of solicitors whom would have been given all the relevant instructions by both the plaintiff and the defendant (there are no evidences to the contrary). It would have been very easy for the firm of solicitors to draft the relevant words to reflect the Mr Hussein's contention as they had done for cl 7 of the tenancy agreement.

[17] As for the submission by Mr Hussein that not to imply a term as suggested will be unduly harsh to the plaintiff, I can do no better than refer to the case of *Mulpha Pacific Sdn Bhd v Paramount Corp Sdn Bhd* [2003] 4 MLJ 357 where the Court of Appeal at p 301 states as follows:

> In *Royal Selangor Golf Club, The v Anglo-Oriental (Malaya) Sdn Bhd* [1990] 1 CLJ 995, Lim Beng Choon J said:
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> > In considering the disputes of the parties I must first of all bear in mind the general principles of construction of contract as enunciated in the *National Coal Board v Wm Neill & Son (St Helen)* [1984] 1 All ER 555 where it is said at p 560: The first two issues involve the construction of the contract. 1 bear in mind the principles of construing a contract. The relevant ones for the purpose of this case are: (1) construction of a contract is a question of law; (2) where the contract is in writing the intention of the parties must be found within the four walls of the contractual documents; it is not legitimate to have regard to extrinsic evidence (there is, of course, no such evidence in this case); (3) a contract must be construed as at the date it was made: it is not legitimate to construe it in the light of what happened years or even days later; (4) the contract must be construed as a whole, and also, so far as practicable, to give effect to every part of it.
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> In *Central Bank of India v Hartford Fire Insurance Co Ltd* AIR [1965] SC 1288, the Supreme court of India lays stress on the second principle advocated in the *Wm Neill & Sons (St Helens) Ltd* case when it said at p 1290:
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> > Now it is commonplace that it is the court's duty to give effect to the bargain of the parties according to their intention and when that bargain is in writing the intention is to be looked for in the words used unless they are such that one may suspect that they do not convey the intention correctly. If those words are clear, there is very little that the court has to do. The court must give effect to the plain meaning of the words however much it may dislike the result.
>
> The intention of the parties must be ascertained from the words used in the agreement. Whichever way we look at cl 4.2 of the agreement, we are of the view that the respondent would be entitled to claim interest for the additional month plus 3 days even if the appellant had not breached the agreement and had completed the transaction. Our sympathies are with the appellant. The RM9m which they paid as deposit have been forfeited and, in addition to that, they have been ordered to pay interest amounting to the sum of RM776,712.33 together with interest from 21 November 1997 to date of payment. But then, the court must give effect to the plain meaning of the words of cl 4.2 of the agreement however much it may dislike the result (see also the case of *Setapak Heights Development Sdn Bhd v Tekno Kota Sdn Bhd* [2006] 3 AMR 410

[18] There is of course no allegation by PW1 stating that the tenancy agreement was an unfair or unconscionable one. In any event for equity to intervene in an unconscionable agreement, the plaintiff must prove that there is an inequality of bargaining powers between it and the defendant. In the Australia High Court's decision in *Commercial Bank of Australia v Amadio* [1983] 151 CLR 447, Deane J described the jurisdiction of the courts of equity to relieve against unconscionable dealings is long established, and generally extends to:

(i) a party to a transaction was under a special disability in dealing with the other party with the consequence that was an absence of any reasonable degree of equality between them and

(ii) that disability was sufficiently evident to the stronger party to make it prima facie unfair or "unconscientious" that he procure, or accept, the weaker party's assent to the impugned transactions in the circumstances in which he procured or accepted it. Where such circumstances are shown to have existed, an onus is cast on the stronger party to show that the transaction was fair, just and reasonable.

[19] Not only is there no evidence on the element of inequality in bargaining powers between the parties, PW1 comes across from his testimony in court as a person who is well versed with the intricacy of the business dealings and not one likely to be misled or bullied by anyone.

[20] As for the case of *Abdul Johari Abdul Rahman v Lim How Chong & Ors* [1999] 5 MLJ 593, relied by Mr Hussein, I agree with Mr Tan Thiam Teck that the facts in that case are different to the present case in that there was no encouragement by the defendant to expend money into the golf course. The tenancy agreement was entered into by the parties here after extensive negotiations.

[21] Lastly on this issue, reliance was made on para 2.5 of RZ 2 which states as follows:

> Segala Pembinaan yang dimaksudkan di (2.1) adalah kepunyaan Perttabanan Stadium Negeri Sarawak selesai sahaja kontrek diantara kedua-dua pihak tamat
>
> All constructions as stated at (2.1) shall be owned by the State Stadium upon the expiry of the contract between the two parties (English translation)

[22] The plaintiff contends that the word 'tamat' refers only to the expiration of the seven years and not to termination of the tenancy agreement. With respect, this paragraph does not help the plaintiff as RZ2 contains only the general intention of the parties and provides the basis for the drafting of tenancy agreement. Once the tenancy agreement is drafted and executed by the parties, the court is only entitled to look at the words employed in it. Mr Hussein also relies RZ13 exhibited in PW1-A which in my judgment had been adequately dealt with by Mr Tan Thiam Teck at p 12 of his written reply (encl 140).

[23] I shall now deal with the defendant's counterclaim of RM23,081.06 being outstanding rentals for part of month of October 1996, the months of November, December 1996 and June, July August, September and October 1997 and water consumed by the plaintiff which had been paid by the defendant. From the evidences there appears to be no real challenge by the plaintiff on its liability for those outstanding rentals and the water bill of RM952.66. The proof of the amount of RM23,081.06 is contained in DW4-A which in my view had not been shaken by cross examination.

[24] Accordingly for reasons given above, the plaintiff's claim is hereby dismissed with costs to be taxed unless agreed by the defendant. In respect of the defendant's counterclaim I enter judgment for the defendant in the sum of RM 23,081.06 with interest under s 11 of the Civil Law Act thereon at the rate of 4% from the date of

A the writ of summons to the date of judgment and thereafter statutory interest at the rate of 8% from the date of judgment until the date of full payment by the plaintiff and costs to be taxed unless agreed by the defendant.

Date (of the delivery of judgment): 26 June 2006 (Monday).

Postscript:

B

[25] After the delivery of my judgment, it was brought to my notice by counsel that my award of pre judgment interests on the counterclaim to run from the date of the writ of summons may not be proper. Hence on the 29 June 2006, I called counsels to chambers to inform them that having reread my judgment, I will be C varying my award of pre judgment interests on the counterclaim as the present wordings did not reflect the intention of the court. This is obvious as the counterclaim did not exist on the date of the writ of summons and only came into being on the date of the counterclaim. Accordingly, I deleted lines 19–21 of p 26 and lines 1–3 of p 27 of my judgment and substitute the same with the following:

D

> In respect of the defendant's counterclaim I enter judgment for the defendant in the sum of RM23,081.06 with interest under s 11 of the Civil Law Act thereon at the rate of 4% from the date of the counterclaim to the date of judgment and thereafter statutory interest at the rate of 8% from the date of judgment until the date of full payment by the plaintiff and costs to be taxed unless agreed to the defendant

E

Plaintiff's claim dismissed. Defendant's counter claim allowed.

Reported by Peter Ling

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